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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,817	09/26/2001	Gary Gomringer	70800.01	1182

26161 7590 04/12/2005

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225 FRANKLIN ST
BOSTON, MA 02110

EXAMINER

BUI, VY Q

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/963,817

Applicant(s)

GOMRINGER ET AL

Examiner

Vy Q. Bui

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-26 and 30-42 is/are pending in the application.
- 4a) Of the above claim(s) 30-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-26, 40-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-26, 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over DOR et al. (6,334,871) in view of BREER (3,869,956).

DOR (Figs. 1-7; claim 1) discloses stent 1 defining struts with holes 2 to receive radiopaque rivets 3/8/9/12 of gold/tantalum/platinum having heads 13 or cone heads shown in Fig. 4 having larger diameter than the diameter of the rivets' shaft. DOR does not disclose a washer in combination with a rivet. However, rivet and washer combination is conventional and a well-known fastener combination. For example, BREER (Figs. 1a-1b; col. 1, lines 59-64) discloses rivet 20 and washer 21 for relief of a radial expansion of rivet 20 at the washer end. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a washer to a DOR rivet 3/8/9/12 to allow a relief of the radial expansion of DOR rivet at the washer end of DOR rivet. Further, it would have been quite within level of one of ordinary skill in the art to size the rivet as recited in the claims so as the rivet can fit to the DOR stent.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are not persuasive.

According to the "Remarks" (pages 6-7) entered 1/19/2005 in response to the non-final rejection entered 11/17/2004, the Applicants admitted that the rivet-washer combination is conventional but argued that: "Rather, a person of ordinary skill in the art working with stents would have recognized that stents are used in narrow vessels, and that it is desirable for a stent to function with a reduced wall profile because a reduced wall profile allows more bodily fluid to flow through the stent. Adding a washer to an otherwise well-secured rivet, as suggested by the Examiner, would be nonsensical, because the rivet would increase the wall profile of the stent. Thus, a person of ordinary skill in the art would not have been motivated to modify Dor's stents by securing their rivets with any washers, including the washers disclosed in either Breer or Schwarz".

Even Breer-'956 does not show a rivet flushed with a beveled-hole washer, Dor et al.-6,334,871 (Fig. 7 and col. 3, lines 44-48) show heads 13 of the rivet in Fig. 7 protrude both sides of stent structure 1 without any concern about increasing a stent wall profile or reducing a bodily fluid flow within the lumen of the stent. From Fig. 7 of Dor-'871, it would be a clear teaching that the wall profile of a stent at a radiopaque marker location can be thicker than other locations of the stent. With the teaching of Dor-'871 (Fig. 7, col. 3, lines 44-48), one of ordinary skill in the art would understand that an inclusion of a washer to a rivet as suggested in the above rejection would be fine for a bodily fluid flow and it would be fine to modify Dor-'871 stent to include a washer to a rivet in view of Breer- '956 as suggested in the above rejection.

Art Unit: 3731

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



04/11/2005

Vy Q. Bui
Primary Examiner
Art Unit 3731